



BILLING CODE: 4310-55

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

[Dockets No. FWS–R9–MB–2012–0028 and FWS–R9–MB–2012–0038;

FF09M21200-123–FXMB1231099BPP0L2]

RINs 1018–AY61, 1018–AY66

**Migratory Bird Hunting; Application for Approval of Copper-clad Iron Shot and
Fluoropolymer Shot Coatings as Nontoxic for Waterfowl Hunting**

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; availability of draft environmental assessments.

SUMMARY: We, the U.S. Fish and Wildlife Service, propose to approve copper-clad iron shot and fluoropolymer coatings for hunting waterfowl and coots. We published a notice of application for nontoxic shot approval for copper-clad iron shot in the **Federal Register** on June 20, 2012 (77 FR 36980), and one for the fluoropolymer shot coatings on July 6, 2012 (77 FR 39983). Having completed our review of the application materials for both, we have concluded that neither the shot nor the coatings are likely to adversely affect fish, wildlife, or their habitats.

DATES: Electronic comments on this proposal via <http://www.regulations.gov> must be submitted by 11:59 p.m. Eastern time on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Comments submitted by mail must be postmarked no later than **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: *Document Availability.* You may view the application and our draft environmental assessments by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Search for Docket No. FWS–R9–MB–2012–0028 for copper-clad iron shot, or Docket No. FWS–R9–MB–2012–0038 for fluoropolymer shot coatings.
- Request a copy by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

Written Comments: You may submit comments by either one of the following two methods:

- Federal eRulemaking portal: <http://www.regulations.gov>. Follow the instructions for submitting comments on either or both of the dockets.
- U.S. mail or hand delivery: Public Comments Processing, Attention: FWS-R9-MB-2011-0060; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 North Fairfax Drive, MS 2042-PDM; Arlington, VA 22203-1610.

We will not accept email or faxes. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information that you provide.

FOR FURTHER INFORMATION CONTACT: Dr. George Allen, at 703–358–1825.

SUPPLEMENTARY INFORMATION:

Background

The Migratory Bird Treaty Act of 1918 (Act) (16 U.S.C. 703–712 and 16 U.S.C. 742 a–j) implements migratory bird treaties between the United States and Great Britain for Canada (1916 and 1996 as amended), Mexico (1936 and 1972 as amended), Japan (1972 and 1974 as amended), and Russia (then the Soviet Union 1978). These treaties protect most migratory bird species from take, except as permitted under the Act, which authorizes the Secretary of the Interior to regulate take of migratory birds in the United States. Under this authority, we control the hunting of migratory game birds through regulations in 50 CFR part 20. We prohibit the use of shot types other than those listed in the Code of Federal Regulations (CFR) at 50 CFR 20.21(j) for hunting waterfowl and coots and any species that make up aggregate bag limits.

Deposition of toxic shot and release of toxic shot components in waterfowl hunting locations are potentially harmful to many organisms. Research has shown that ingested spent lead shot causes significant mortality in migratory birds. Since the mid-1970s, we have sought to identify types of shot for waterfowl hunting that are not toxic to migratory birds or other wildlife when ingested. We have approved nontoxic shot types and added them to the migratory bird hunting regulations in 50 CFR 20.21(j). We continue to review all shot types submitted for approval as nontoxic.

We addressed lead poisoning in waterfowl in an environmental impact statement (EIS) in 1976, and again in a 1986 supplemental EIS. The 1986 document provided the

scientific justification for a ban on the use of lead shot and the subsequent approval of steel shot for hunting waterfowl and coots that began that year, with a complete ban of lead for waterfowl and coot hunting in 1991. We have continued to consider other potential candidates for approval as nontoxic shot. We are obligated to review applications for approval of alternative shot types as nontoxic for hunting waterfowl and coots.

Many hunters believe that some nontoxic shot types compare poorly to lead and may damage some shotgun barrels. A small and decreasing percentage of hunters have not complied with nontoxic shot regulations. Allowing use of additional nontoxic shot types may encourage greater hunter compliance and participation with nontoxic shot requirements and discourage the use of lead shot. The use of nontoxic shot for waterfowl hunting increased after the ban on lead shot (Anderson et al. 2000), but we believe that compliance would continue to increase with the availability and approval of other nontoxic shot types. Increased use of nontoxic shot will enhance protection of migratory waterfowl and their habitats. More important is that the U.S. Fish and Wildlife Service is obligated to consider all complete nontoxic shot submissions.

Applications

Environ-Metal, Inc., of Sweet Home, Oregon, seeks approval of copper-clad iron shot as nontoxic. We evaluated the impact of approval of this shot type in a draft environmental assessment, which we are making available for public review (see **ADDRESSES**). The iron core of the shot has long been approved, so our concern with this shot is the copper cladding on the iron core. The data from Environ-Metal indicate that the copper will not be toxic when ingested by waterfowl, and should not pose a significant danger to migratory birds, other

wildlife, or their habitats. We conclude that the shot should not be of concern if deposited in the environment or if ingested by waterfowl or predators.

Spectra Shot, LLC, of Lafayette, Louisiana, seeks approval of fluoropolymer coatings as evaluated in a draft environmental assessment, which we are making available for public review (see **ADDRESSES**). Information from Spectra Shot indicates that the fluoropolymer coatings will be nontoxic when ingested by waterfowl, and should not pose a significant danger to migratory birds, other wildlife, or their habitats. We conclude that the information raises no particular concerns about deposition in the environment or about ingestion by waterfowl or predators.

We have reviewed the shot and the shot coatings under the criteria in Tier 1 of the revised nontoxic shot approval procedures at 50 CFR 20.134 for permanent approval of shot and coatings as nontoxic for hunting waterfowl and coots. We propose to amend 50 CFR 20.21(j) to add the shot and the coatings to the list of those approved for waterfowl and coot hunting. Details on the evaluations of the shot and the coatings can be found in the draft environmental assessments.

Copper-clad Iron Shot

Copper-clad iron shot is a composite in which copper is thermo-mechanically bonded to centerless-ground steel rod, then mechanically worked to final wire and shot configurations. Copper-clad iron shot may be produced with a variety of different proportions of copper and iron, ranging from 16 to 44.41% by weight copper, with a density of approximately 8.3 grams per cubic centimeter. Environ-Metal asserts that “there is little variability in composition to be expected” in production of the shot. Environ-Metal expects to produce about 50,000 pounds of copper-clad iron shot per year.

Fluoropolymer Coatings

Spectra Shot is cut wire shotgun shot (steel shot) with a proprietary shot coating. Four different colors of the coated shot will be marketed as Spectra Shot™ Blue, Spectra Shot™ Green, Spectra Shot™ Orange, and Spectra Shot™ Yellow. The thickness of the coating will be 3 to 10 microns, with a corresponding weight per shot as follows: Spectra Shot™ Blue - 0.209 milligram per shot; Spectra Shot™ Green - 0.732 milligram per shot; Spectra Shot™ Orange - 0.942 milligram per shot; and Spectra Shot™ Yellow - 1.779 milligrams per shot. Spectra Shot expects annual use of the coated shot in hunting migratory birds in the United States to be 98,000 pounds.

Polyamide-imide copolymer, polytetrafluoroethylene, amorphous fumed silica, and methylphenyl polysiloxane are common to all Spectra Shot™ colors and make up the bulk of the coating. The pigments vary between coatings, and comprise 13.8% to 20.5% by weight of the dry film.

Effects of the Approval on Migratory Waterfowl

Allowing use of additional nontoxic shot types may encourage greater hunter compliance and participation with nontoxic shot requirements and discourage the use of lead shot. Furnishing additional approved nontoxic shot types and nontoxic coatings likely would further reduce the use of lead shot. Thus, approving additional nontoxic shot types and coatings would likely result in a minor positive long-term impact on waterfowl and wetland habitats.

Effects on Endangered and Threatened Species

The impact on endangered and threatened species of approval of copper-clad iron shot and fluoropolymer coatings alloys would be very small, but positive. Copper-clad iron

shot and fluoropolymer coatings are highly unlikely to adversely affect animals that consume the shot or habitats in which the shot might be used. We see no potential effects on threatened or endangered species due to approval of the shot type or the coatings.

We obtained a biological opinion pursuant to section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.), prior to establishing the seasonal hunting regulations. The hunting regulations promulgated as a result of this consultation remove and alleviate chances of conflict between migratory bird hunting and endangered and threatened species.

Effects on Ecosystems

Previously approved shot types have been shown in test results to be nontoxic to the migratory bird resource, and we believe that they cause no adverse impact on ecosystems. There is concern, however, about noncompliance with the prohibition on lead shot and potential ecosystem effects. The use of lead shot has a negative impact on wetland ecosystems due to the erosion of shot, causing sediment/soil and water contamination and the direct ingestion of shot by aquatic and predatory animals. Though we believe noncompliance is of concern, approval of the shot type and the coatings would have little impact on the resource, unless it has the small positive impact of reducing the rate of noncompliance.

Cumulative Impacts

We foresee no negative cumulative impacts if we approve the shot type and the coatings for waterfowl hunting. Their approval could help to further reduce the negative impacts of the use of lead shot for hunting waterfowl and coots. We believe the impacts of the approvals for waterfowl hunting in the United States should be positive.

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. OIRA has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (Pub. L. 104-121)), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions).

SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant

economic impact on a substantial number of small entities. We have examined this rule's potential effects on small entities as required by the Regulatory Flexibility Act, and have determined that this action would not have a significant economic impact on a substantial number of small entities. The rule would allow small entities to improve their economic viability. However, the rule would not have a significant economic impact because it would affect only two companies. We certify that because this rule would not have a significant economic effect on a substantial number of small entities, a regulatory flexibility analysis is not required.

This rule is not a major rule under the SBREFA (5 U.S.C. 804 (2)).

- a. This rule would not have an annual effect on the economy of \$100 million or more.
- b. This rule would not cause a major increase in costs or prices for consumers; individual industries; Federal, State, Tribal, or local government agencies; or geographic regions.
- c. This rule would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.), we have determined the following:

- a. This rule would not “significantly or uniquely” affect small governments. A small government agency plan is not required. Actions under the regulation would not affect small government activities in any significant way.

b. This rule would not produce a Federal mandate of \$100 million or greater in any year. It would not be a “significant regulatory action” under the Unfunded Mandates Reform Act.

Takings

In accordance with E.O. 12630, this rule does not have significant takings implications. A takings implication assessment is not required. This rule does not contain a provision for taking of private property.

Federalism

This rule does not have sufficient Federalism effects to warrant preparation of a federalism summary impact assessment under E.O. 13132. It would not interfere with the ability of States to manage themselves or their funds.

Civil Justice Reform

In accordance with E.O. 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of E.O. 12988.

Paperwork Reduction Act

This proposed rule does not contain any new collections of information that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. OMB has approved our collection of information associated with applications for approval of nontoxic shot (50 CFR 20.134) and assigned OMB Control Number 1018-0067, which expires May 31, 2015.

National Environmental Policy Act

Our draft environmental assessment is part of the administrative record for this proposed regulations change. In accordance with the National Environmental Policy Act (NEPA, 42 U.S.C. 4321 et seq. and Part 516 of the U.S. Department of the Interior Manual (516 DM), approval of copper-clad iron shot and fluoropolymer coatings would not have a significant effect on the quality of the human environment, nor would it involve unresolved conflicts concerning alternative uses of available resources. Therefore, preparation of an environmental impact statement (EIS) is not required.

Government-to-Government Relationship with Tribes

In accordance with the President's memorandum of April 29 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), E.O. 13175, and 512 DM 2, we have evaluated potential effects on federally recognized Indian Tribes and have determined that there are no potential effects. This rule would not interfere with the ability of Tribes to manage themselves or their funds or to regulate migratory bird activities on Tribal lands.

Energy Supply, Distribution, or Use (E.O. 13211)

On May 18 2001, the President issued E.O. 13211 addressing regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule change would not be a significant regulatory action under E.O. 12866, nor would it significantly affect energy supplies, distribution, or use. This action would not be a significant energy action, and no Statement of Energy Effects is required.

Compliance with Endangered Species Act Requirements

Section 7 of the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 et seq.), requires that “The Secretary [of the Interior] shall review other programs administered by him and utilize such programs in furtherance of the purposes of this chapter” (16 U.S.C. 1536(a)(1)). It further states that the Secretary must “insure that any action authorized, funded, or carried out... is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat” (16 U.S.C. 1536(a)(2)). We have concluded that the regulation change would not affect listed species.

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, please send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements,
Transportation, Wildlife.

For the reasons discussed in the preamble, we propose to amend part 20, subchapter B, chapter I of title 50 of the Code of Federal Regulations as follows:

PART 20 - [AMENDED]

1. The authority citation for part 20 continues to read as follows:

Authority: Migratory Bird Treaty Act, 40 Stat. 755, 16 U.S.C. 703-712; Fish and Wildlife Act of 1956, 16 U.S.C. 742a-j; Public Law 106-108, 113 Stat. 1491, Note Following 16 U.S.C. 703.

2. Amend § 20.21(j)(1) by revising the table and footnotes to read as follows.

§ 20.21 What hunting methods are illegal?

* * * * *

(j)(1) * * *

| Approved shot type* | Percent composition by weight | Field testing device** |
|-----------------------------|---|--|
| Bismuth-tin | 97 bismuth, and 3 tin | Hot Shot ^{®****} |
| Iron (steel) | iron and carbon | Magnet or Hot Shot [®] |
| Iron-tungsten | any proportion of tungsten, and ≥ 1 iron | Magnet or Hot Shot [®] |
| Iron-tungsten-nickel | ≥ 1 iron, any proportion of tungsten, and up to 40 nickel | Magnet or Hot Shot [®] |
| Copper-clad iron | 84 to 56.59 iron core, with copper cladding up to 44.1 of the shot mass | Magnet or Hot Shot [®] |
| Tungsten-bronze | 51.1 tungsten, 44.4 copper, 3.9 tin, and 0.6 iron, or 60 tungsten, 35.1 copper, 3.9 tin, and 1 iron | Rare Earth Magnet |
| Tungsten-iron-copper-nickel | 40–76 tungsten, 10–37 iron, 9–16 copper, and 5-7 nickel | Hot Shot [®] or Rare Earth Magnet |
| Tungsten-matrix | 95.9 tungsten, 4.1 polymer | Hot Shot [®] |
| Tungsten-polymer | 95.5 tungsten, 4.5 Nylon 6 or 11 | Hot Shot [®] |
| Tungsten-tin-iron | any proportions of tungsten and tin, and ≥ 1 iron | Magnet or Hot Shot [®] |
| Tungsten-tin-bismuth | any proportions of tungsten, tin, and bismuth | Rare Earth Magnet |

| | | |
|--------------------------|--|--|
| Tungsten-tin-iron-nickel | 65 tungsten, 21.8 tin, 10.4 iron, and 2.8 nickel | Magnet |
| Tungsten-iron-polymer | 41.5–95.2 tungsten, 1.5–52.0 iron, and 3.5-8.0 fluoropolymer | Rare Earth Magnet or Hot Shot [®] |

* Coatings of copper, nickel, tin, zinc, zinc chloride, zinc chrome, and fluoropolymers on approved nontoxic shot types also are approved.

** The information in the “Field Testing Device” column is strictly informational, not regulatory.

*** The “HOT*SHOT” field testing device is from Stream Systems of Concord, CA.

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Dated: September 12, 2012

Michael J. Bean

Acting Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

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